

**REMARKS**

The Final Office Action dated February 25, 2003 has been carefully reviewed and the following remarks are made in response thereto. In view of these remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

The Examiner indicated that claims 40-41 were allowed and claims 33-37 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. As a result of this amendment, claims 30-32 and 39 are newly canceled, claims 33-38 and 40 are newly amended and claim 42 is newly added. Thus, claims 33-38 and 40-42 are pending.

**Response to the rejections under 35 U.S.C. 102(b) and 103(a) over Smith et al.**

Claims 30-32 and 39 stand rejected under 35 U.S.C. 102(b) and 103(a), for purportedly being anticipated and/or being unpatentable over Smith *et al.*, (EP 0779363 A2).

Claims 30-32 and 39 have been canceled. As such, the rejections under 35 U.S.C. 102(b) and 103(a) are now moot and should be withdrawn.

**Response to the rejection under 35 U.S.C. 112, second paragraph**

Claim 38 stands rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner states that claims must stand alone and that the incorporation into claims by express reference to the specification or drawings is not permitted except in very limited circumstances.

Applicants have newly amended claim 38 so that it now stands alone. Previously pending claim 38 referred to starch with "a chain length distribution essentially as shown by traces 0445 or 0422 in Figure 11". Amended claim 38 now refers to starch from the transformed plants which has "a chain length distribution with about a two fold increase in starch molecules with a degree of polymerization of 6-7 and a depletion of starch molecules with a degree of polymerization between 15-20" when compared to non-transformed plants. The newly-

introduced phrase is descriptive of traces 0445 and 0422 in Figure 11. See, Figure 11 and the description of Figure 11 provided at page 9, sixth paragraph of the specification. Furthermore, the newly introduced phrase finds explicit support at page 30, top paragraph of the as-filed specification:

“They both showed a large (about 2 fold) increase in short chains (DP6&7) compared to the 0402 control. In addition, the chain length profile of these starches had a distinctive shoulder to the peak, indicating a depletion of chains of between DP15-20 compared to the 0402 control.”)

The Examiner is respectfully requested to withdraw the rejection in view of the amendment to claim 38.

#### **Objection to Claims 33-37**

The Examiner stated that claims 33-37 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicants have newly amended claim 33 so that it includes the limitations of claims 30 and 32. Applicants have also newly amended claims 34-37 so that they include the limitations of claim 30. As a result of these amendments, each of claims 33-37 now include the limitations of claim 30 as well as an explicit recitation of the applicable equipment/method used to measure the specified characteristics of the claimed starch.

The Examiner is respectfully requested to withdraw the objection to claims 33-37 in view of the amendments to these claims.

#### **Conclusion**

The foregoing amendments and remarks are being made to place the application in condition for allowance. Applicants respectfully request reconsideration and the timely allowance of the pending claims. A favorable action is awaited. Should the Examiner find that

an interview would be helpful to further prosecution of this application, he is invited to telephone the undersigned at his convenience.


If there are any additional fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 50-0310. If a fee is required for an extension of time under 37 C.F.R. 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

**MORGAN, LEWIS & BOCKIUS LLP**

Date: May 16, 2003

By:

  
\_\_\_\_\_  
Erich E. Veitenheimer  
Reg. No. 40,420

CUSTOMER NO. 09629  
MORGAN, LEWIS & BOCKIUS LLP  
1111 Pennsylvania Avenue, NW  
Washington, D.C. 20004  
202-739-3000